

REMARKS

This paper is filed in response to the office action mailed on February 9, 2005. Claims 1-17 stand rejected; claims 1, 7, 10 and 13 have been amended; claims 1-17 remain pending.

The office action rejects claims 1-17 under 35 U.S.C. § 103 as being unpatentable over WO 02/15735 ("Unilever") in view of U.S. Patent No. 6,767,126 ("Miller"). In response, each independent claim has been amended to make it clear that the first base suspension added to the container is free of colorant and further that the final base suspension added to the container is also free of colorant thereby sandwiching the suspensions containing colorant between the first or lower and last or upper base suspensions. Applicant hereby makes it clear that he does not consider titanium dioxide, talc or silicon to be colorants.

Applicant respectfully submits that amended claims 1, 7, 10 and 13 are all allowable over any hypothetical combination of Unilever and Miller for the following reasons. At the outset, under MPEP § 2142,

[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure."

Citing, In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); see also MPEP § 2143-§ 2143.03 for decisions pertinent to each of these criteria.

No combination of Unilever and Miller teaches or suggests all of the limitations of the pending independent claims. Specifically, Unilever in no way teaches or suggests adding a first base suspension that is free of colorant to a container prior to the addition of suspensions that contain colorant. Unilever in no way teaches or suggests adding a base suspension last after all of the other ingredients have been added whereby the last base suspension is also free of colorant. Applicant respectfully disagrees with the position taken by the Patent Office on page 2 of the office action.

Specifically, page 4 of Unilever in no way teaches or suggests adding "suspensions comprising one or more colorants on top of a first base suspension" as alleged by the Patent Office. Instead, page 4 of Unilever merely provides two groups or classes of performing agents that can be modified when customizing a personal care formulation. Unilever in no way makes it clear that any one of these classes includes base suspensions and Unilever in no way suggests that base should be added to the container first and last as recited in each pending independent claim.

Instead, Unilever only suggests at page 5, lines 10-13 that "certain products will have greater stability if dosed in a specific sequence such as for body toner where the product base should be dosed first, for maximum stability." This statement and teaching has nothing to do with mixability. Each pending independent claim of the present application requires base to be added first, followed by one or more suspensions containing colorants, followed by a final base dose that is last. The base suspensions must be free of colorant. Neither applicant nor those skilled in the art regard titanium dioxide, talc or silicon (the main constituents of makeup base suspensions) to be colorants. This is clear from the specification and is now made blatantly clear in the pending independent claims.

Because Unilever does not even address the problems of mixability, and further because Unilever in no way teaches or suggests adding a base first, followed by colorants, followed by a final base, Unilever is clearly deficient as a base reference for pending independent claims 1, 10, 7 and 13.

The Miller reference merely teaches a gyroscopic mixer and therefore cannot supplement Unilever with respect to any of the deficiencies addressed above.

Accordingly, no combination of Miller and Unilever teaches or suggests every limitation of independent claims 1, 7, 10 and 13 and therefore claims 1-17 are clearly allowable over any hypothetical combination of these references.

If the examiner disagrees, applicant invites the examiner to telephone the undersigned at the number listed below to discuss this application further.

An early action indicating the allowability of this application is respectfully requested.

Application No.: 10/626,323

Docket No.: 29891/FMP0385

The Commissioner is authorized to charge any fee deficiency required by this paper, or credit any overpayment, to Deposit Account No. 13-2855.

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Respectfully submitted,

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